

Nov. 20, 2004

Injunction Granted

Yesterday Nov. 19 Justice Stong of the Ontario Superior Court granted an injunction against the city of Orillia. Justice Stong stated that the issue is urgent and that the Health and Environment is of paramount concern to the community. The injunction was ordered yesterday and will be in force until the 21st. of January (we only asked for a six day injunction). All our requests were met by the judge and more.

You will hear all kinds of spin from the city trying to save face but as in everything the city has said and done on the MURF file it is just spin with no substance. For those interested here is what we sought to accomplish and what we got.

On Nov. 9 the city began digging and delivering hazardous dirt to the landfill. We attempted to get an injunction on that day to stop work for a week and be allowed to have independent tests done on the soil. We were thwarted by the city to go ahead with a hearing as they asked and received a delay. The city used this time to haul this dangerous and hazardous dirt to the dump and as of yesterday had completed about 30% of the dirty deed. It is worth noting that the city was so anxious to put as much hazardous dirt at the dump that they were working into the evening using flood lights. All this in an effort to thwart us. Through out this time the city has refused us access to do our own testing and it was full speed ahead and damn the torpedo's.

Realizing that a third of the work was already done what the coalition asked for and got in spades was how the hazardous soil is kept at the dump (temporary storage) and the right of access for the purpose of having independent testing done. The justice also stated that if a chemical is listed as hazardous by the MOE then just because it passes the leachate test does not automatically mean it is not hazardous. You see without boring you there are two other tests in the legislation and it is clear the if any one of these tests are not met then the dirt is hazardous. The city has been playing smoke and mirrors and Justice Stong has called them on it. So the next time you hear the spin that our experts say it is safe just remember that Justice Stong has looked at the legislation and he has stated that regardless of how high or low the readings are, if the chemical is on the MOE list and is above the threshold it is hazardous. This legislation is in place to protect people and the city has been thumbing it's nose at it and us.

So what now? Well we can now begin getting to the truth. The city will finish the dig but will have to store the hazardous material properly with the idea that if our independent tests prove the soil contains hazardous material then it will be removed to a licensed site that can deal with the soil safely. It is worth noting that the cities own testing already proves our case but we want to know how bad this stuff really is and that is why we are going to test. So it is not a matter of if the soil will be removed but when. This time will also allow our expert Dr. Derek Ford a world renowned Hydrologist to review in more detail Shaheen and Peakers reports. You see in Dr. Fords affidavit which was a critique of these reports he uses the word "Catastrophic", not lightly used by an expert of his caliber. Dr. Ford is internationally recognized and his advice has been sought by the Canadian government as well as most provinces, USA as well as many state agencies and even the MOE, Mexico, France, etc.. So for him to use the word "Catastrophic" is a serious matter. Even though the cities lawyers attempted to have his affidavit along with Kelly Clune's and mine dismissed the judge agreed that all were relevant and allowed.

On the subject of costs awarded our submission was that each party should pay their own costs. Mike Miller the cities solicitor while admitting that we had a right to costs seeing that we had won the injunction wanted the judge to put off awarding it until the whole matter is resolved and

then order costs on the losing party. Justice Stong stated that he was intrigued by Mr. Millers argument that it was public money and if the city prevails then it should receive compensation. But (and this is priceless) Justice Stong said in his opinion if the coalition testing proves the soil is hazardous then the city pays \$4,000 in costs for the injunction. If the coalition testing shows that the soil is non hazardous then each party pays their own cost.

The judge made a last comment that made all of our group feel that maybe justice can prevail no matter how hard the Power works to discredit us individually. Justice Stong said "I fault no one for bringing this action it is a serious matter. We should in fact we must have trust in our elected officials but I find no fault in this action". Such a nice way of saying that we the people do have a right to question what people we elect do to us.

It is now imperative that we start the testing process and make sure that the soil is stored safely. We don't expect the city to roll over so it is important that the court of public opinion be heard. We need your help more than ever. It is not only legal costs we face but also lab testing. Our little group can not begin nor should we be expected to shoulder the cost. What we have done and continue to do is for the community at large. We need you to help, not us but yourselves to make sure we have the resources to win this unnecessary war brought on by a handful of city officials to the detriment of every citizen. Had they been honest and forth coming we would have gladly worked with them to address our concerns. But no it was their way or the highway and I don't believe for a minute that they won't spend hundreds of thousands of your dollars to save face regardless of whether it is in your best interest or not. So please join us in making sure that this generation and future generations are safe. For those who did not see Mayor Stevens on the cable program Politically Speaking the other night he was asked "what happens if indeed this soil at the dump does start leaching in the future". His answer " council of the day will have to deal with it". Typical isn't it. Pass the buck instead of doing the right thing on his watch. He also refused to guarantee that a disaster would not happen. All he kept saying was our experts tell us. He obviously doesn't know nor does he care to know.

You can send your donation cheques to: **and please be generous**

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or direct deposit to:

TD Canada Trust Peter St. or from any branch of TD Canada Trust

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The Citizens Coalition will be holding a public meeting to bring everyone up to speed so please watch for the announcement of where and when.

Jim Tolnai